

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAROL A ROBINSON
Claimant

GIT-N-GO CONVENIENCE STORES INC
Employer

APPEAL 17R-UI-04633-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/19/17
Claimant: Respondent (2)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Git-N-Go Convenience Stores, Inc. (employer) filed an appeal from the March 1, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Carol A. Robinson (claimant) was eligible for partial unemployment insurance benefits as she was employed in the same hours and wages as before she began her employment. After due notice was issued, a hearing was held with Administrative Law Judge Christine A. Louis who reversed the unemployment insurance decision. The claimant appealed Judge Louis' decision to the Employment Appeal Board (EAB) who remanded the case for further development of the record, specifically related to whether the claimant was partially unemployed and eligible for benefits.

The parties were properly notified about the new hearing. A telephone hearing was held on May 19, 2017. The claimant registered a phone number but did not answer when called at the registered number. Official notice is taken of the call screen in Clear 2 There to show the claimant did not answer when called. The employer participated through Supervisor Lanette Butt. Official notice was taken of the administrative record, specifically the claimant's wage history and database readout (DBRO). No exhibits were offered.

ISSUES:

Is the claimant partially unemployed effective February 19, 2017?
Is the claimant available for work effective February 19, 2017?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired to work as a Cashier beginning on November 19, 2016. Initially, the employer had more hours available for the claimant to work as it was seeking a new manager.

The claimant requested, early in her employment, that she be scheduled no more than 30 hours per week due to her receipt of social security benefits.

The claimant's hours have varied throughout her employment. She has earned \$9.50 per hour in wages. The administrative record shows during the fourth quarter of 2016, the claimant averaged 27 hours per week for the six week period beginning November 20 through December 31. During the first quarter of 2017, the claimant averaged 28 hours per week for the 13-week quarter. The claimant has reported wages earned for each week she has claimed benefits beginning February 19, 2017 through the week ending April 29, 2017. The wages have varied, but during no week was she completely unemployed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially or totally unemployed. The issues availability for work and the chargeability of the employer's account are moot at this time. Benefits are denied.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's

regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week she has claimed benefits. She is not totally unemployed.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into and requested a part-time position. She has worked part-time hours during her entire employment. Her hours have fluctuated as was the expectation when she was hired. She continues to work for the employer. As the claimant is working in a part-time job in the same hours and wages contemplated at hire or agreed to shortly thereafter, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has she had any weeks of total unemployment, the issues of her availability for work and the chargeability of the employer's account are moot at this time.

DECISION:

The March 1, 2017, reference 01, unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied. The issues of availability for work and the chargeability of the employer's account are moot at this time.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn